

## **REMARKS**

### **Status of the claims:**

With the above amendments, claims 7, 13 and 18 have been amended, claim 20 is canceled, and claims 1-19 are pending and ready for further action on the merits. No new matter has been added by way of the above amendments. Reconsideration is respectfully requested in light of the following remarks.

### **Rejections under 35 U.S.C. §101**

Claim 20 is rejected under 35 U.S.C. §101, for allegedly being directed to non-statutory subject matter. Claim 20 has been canceled so the rejection is moot. Withdrawal of the rejection is warranted and respectfully requested.

### **Rejections under 35 U.S.C. § 102**

Claims 7-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Flender '437 (US Patent Application Publication 2003/0204437 A1). Applicants traverse.

Applicants submit that Flender '437 cannot anticipate claims 7-17 because Flender '437 fails to disclose all of the elements of the instantly claimed invention. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

For example, Flender '437 fails to disclose that the host computing device and the client device exchange data via a wireless network and the data comprises at least one

datum relating to at least one of the following: patient satisfaction; a patient diary; patient recruitment; and/or patient activity compliance as claimed in claim 7. Nowhere in Flender '437 does the word "patient" appear. Accordingly, Flender '437 cannot anticipate the instantly rejected claim 7 or dependent claims 8-11.

Claims 12 and 15 also cannot be anticipated by Flender '437 because Flender '437 fails to disclose "the host computing device and the client device exchange data via a wireless network" as claimed in claims 12 and 15. Flender '437 only discloses that the survey engine can communicate survey response data to the lead engine (emphasis added - see paragraph [0016]). In other words, there is no exchange of data but only a one way passage of data from the survey engine to the lead engine as disclosed in Flender '437. Nowhere in Flender '437 does the word "exchange" appear. Thus, claims 12 and 15 and claims 13-14 and 16-17, which depend from claims 12 and 15, respectively cannot be anticipated by Flender '437. The rejection is inapposite. Withdrawal of the rejection is warranted and respectfully requested.

### **Rejections under 35 U.S.C. § 103**

Claims 1-6 and 18-20 are rejected under 35 U.S.C. §103(a) as being unpatentable over Flender '437 in view of Leveque '860 (US Patent Application Publication 2002/0128860 A1). Applicants traverse.

First, Applicants note that claim 20 has been canceled so the rejection is moot with respect to claim 20.

Second, Applicants assert that the Examiner a failed to establish a proper *prima facie* case of obviousness with respect to the rejection over claims 1-6 and 18-19. To establish a proper *prima facie* case of obviousness, three basic criteria must be met.

- 1) There must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.
- 2) There must be a reasonable expectation of success.
- 3) The prior art reference (or references when combined) must teach or suggest all the claim limitations.

See *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) and MPEP 2142.

Applicants submit that the Examiner has failed to show any of these criteria. For example, however, the Examiner has failed to show criteria 3) that the prior art reference (or references when combined) teach or suggest all the claim limitations.

Neither of the cited references disclose or suggest “the host computing device and the client device exchange data via a wireless network” or “exchanging data between the host computing device and the client device via a wireless network” as claimed in claims 1 and 18 respectively. Flender ‘437 only discloses that the survey engine can communicate survey response data to the lead engine (emphasis added - see paragraph [0016]) as was discussed above. There is no disclosure in Flender ‘437 of the exchange of data. Leveque ‘860 fails to make up for the deficiencies of Flender ‘437. Leveque ‘860 fails to disclose a wireless network. There is no mention of the word “wireless” anywhere in Leveque ‘860. Thus, the combination of the two references cannot render

*prima facie* obvious claims 1 or 18, or claims dependent from claims 1 and 18 (*i.e.*, claims 2-6 and 19, respectively). The rejection is inapposite.

Withdrawal of the rejection is warranted and respectfully requested.

### **CONCLUSION**

With the above amendments and remarks, Applicants believe that all objections and/or rejections have been obviated. Thus, each of the claims remaining in the application is in condition for immediate allowance. A passage of the instant invention to allowance is earnestly solicited.

Applicants respectfully petition for a three month extension fee. Applicants believe that no additional fee is necessary, however, should a fee be deemed to be necessary, the Commissioner is hereby authorized to charge any fees required by this action or any future action to Deposit Account No. 16-1435.

Should the Examiner have any questions relating to the instant application, the Examiner is invited to telephone the undersigned at (336) 607-7486 to discuss any issues.

Respectfully submitted,

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